IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7662 of 1989

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHENDRAKUMAR B HATHIWALA

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner

MR PREMAL JOSHI AGP for Respondent No. 1

MR JIVANLAL G SHAH for Respondent No. 2

NOTICE SERVED for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 25/08/2000

ORAL JUDGEMENT

Hdeard the learned advocates.

Pursuant to the advertisement [Annexure-A to the

petition], the petitioner had applied for appointment to the post of Gram Sevak under the respondent no. 2. The petitioner was selected and placed at Serial No. 8 on the select list. However, though the first seven persons on the select list were issued appointment orders, the petitioner was not offered appointment. Feeling aggrieved, the petitioner has preferred the present petition.

It is contended that out of the seven posts advertised, one post was reserved for Scheduled Caste candidate. The petitioner was the only scheduled caste candidate on the select list, however, the petitioner was not offered appointment, while none of the seven persons who have been offered appointment was of scheduled caste. The petitioner has, therefore, claimed appointment on the given roster point.

In answer to the notice issued by this Court, the petition is contested by the respondent no. 2. It is stated that the roster policy does not envisage appointment in order of roster. The roster is meant for determining the number of vacancies to be filled in by the reserved category candidates, however, the appointments are required to be made in order of merit alone. Accordingly, the appointment of seven persons were made in order of merit.

By an interim order made on 20th April, 1990, this Court [Coram : Mr. Justice M.B Shah, as he then was] had directed inter alia that, ` If there is any vacancy at present, then the respondents shall appoint the petitioner as Gram Savak. If there is no vacancy, the respondents shall appoint the petitioner as Gram Sevak as soon as vacancy arises'. I am informed by Mr. Hathi that pursuant to the above order, the petitioner was offered appointment as Gram Sevak in the year 1990 and he has been working as such since then.

I am of the view that since the petitioner was found to be suitable and was placed at Serial No. 8 of the select list and has been given appointment as Gram Sevak pursuant to the interim order made by this Court and since the petitioner has been continuously serving as Gram Sevak for more than 10 years, the petition is required to be allowed in terms of the interim order dated 20th April, 1990. It is clarified that I have not examined the reservation policy of the State Government nor am I holding that irrespective of the petitioner's position on the merit list he was entitled to preference in appointment according to the roster point. The

petition is accordingly allowed in terms of the interim order dated 20th April, 1990. Rule is made absolute to that extent. The parties shall bear their own costs.

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